# Li Hwee Building Construction Pte Ltd v Advanced Construction & Engineering Pte Ltd and Another
[2002] SGHC 287

**Case Number** : Suit 1500/2001/W, Suit 441/2002/J

**Decision Date** : 03 December 2002

**Tribunal/Court** : High Court

**Coram** : Belinda Ang Saw Ean JC

**Counsel Name(s)** : Scott Thillagaratnam and Joyce Hee (Ramdas & Wong) for the plantiffs in Suit No 1500/2001/W and Suit No 441/2002/J; Edwin Lee and Koh Kok Kwang (CTLC Law Corporation) for the defendants in Suit 1500/2001/W; Roland Tong and Eunice Ng (Wong Tan & Molly Lim) for the defendant in Suit 441/2002/J

**Parties** : Li Hwee Building Construction Pte Ltd — Advanced Construction & Engineering Pte Ltd; Chia Joo Juan

## Judgment

**GROUNDS OF DECISION**

1. Both actions are related and they were heard at the same time. The Plaintiffs, Li Hwee Building Construction Pte Ltd (Li Hwee"), are seeking in Suit No. 1500 of 2001/W damages for wrongful repudiation of a sub-contract made between the Plaintiffs and the Defendants, Advanced Construction & Engineering Pte Ltd, (ACE") on 11 May 2001. The Defendants are main contractors who had successfully tendered for building works at Woodlands ("Woodlands Project"). The tender was called by Sembawang Town Council. The project included the construction of link-ways and senior citizens' corners in Woodlands. The Plaintiffs' case is that the entire project was sub-contracted to them for a lump of price of $722,322. The Defendants dispute this.

2. The Woodlands Project is comprised of Part A and Part B works. Part A works involved the construction of a residents' corner at Block 638 Woodlands Ring Road. Part B works included construction of barbeque pits, 3 covered link-ways, six residents' corners in Woodlands and a senior citizens' corner at Yishun.

3. It is common ground that Part A works were completed by the Plaintiffs. It is the Plaintiffs' case that they started Part A works around 16 May 2001 and completed the works on 24 July 2001 (see DB 197). The Plaintiffs appointed Chia Joo Juan ("Chia") as their project manager. Chia prepared and submitted the Plaintiffs' progress payment claim nos. 01 and 02 to the Defendants on 29 May 2001 and 26 June 2001 respectively.

4. As for Part B works, the Plaintiffs said they commenced work in July 2001 at Block 611 Woodlands Ring Road and Block 622 Woodlands Drive 52. The Plaintiffs put up hoarding and began to hack the flooring at the two Blocks. On or about 15 November 2001, the Defendants wrongly repudiated the sub-contract which repudiation the Plaintiffs accepted the next day. Wee Ngiak Building Construction ("Wee Ngiak"), whose sole proprietor is Chia, completed Part B works.

5. The Defendants dispute the formation of the contract in the terms of the sub-contract dated 11 May 2001 for the entire works. The Defendants' case is that save for an oral agreement with the Plaintiffs in respect of Part A works, no legally enforceable contract came into existence for Part B works. If there was such a contract, it was effectively put to an end by mutual consent. Alternatively, the Plaintiffs are estopped from enforcing the contract for Part B works in that the Plaintiffs had represented to the Defendants, by words or conduct, that all Part B works would cease

on the completion of works at Block 638. In reliance on the representation, the Defendants engaged Wee Ngiak to complete Part B works.

6. The Plaintiffs, a company incorporated three months before Part A works started, have two directors. They are Liew Nam Khiet ("Liew") and Lin Li Feng ("Lin"). Both testified at the hearing.

7. The Defendants have been in the construction business for about ten years and they are Chia's contact At all material times, Chia was in close liaison with the Defendants and the Plaintiffs. The Plaintiffs' directors, Liew and Lin, had little or no direct communication with them. The Defendants' directors who testified at the trial are Koay Weng Joo ("Koay") and Tong Hoo Chuan ("Tong"). The third witness for the Defendant is Chan Him Son ("Chan") the Defendants' contract manager.

8. The issue before me is whether there was a concluded contract and, if there was one, whether it was, on the evidence, mutually terminated by the parties. On the first question, the Defendants argued that the document of 11 May 2001 did not constitute a concluded contract and the evidence supported their contention, as did the events following the signing of the document. To prove their case, it is necessary for the Defendants to show that it is appropriate to have regard to the events which occurred before its signing since there is the general rule that extrinsic evidence is not admissible in order to prove that the intention of the parties was other than that appearing on the face of the document. It is for the Defendants to show that the exception(s) to the parol evidence rule apply in their case. See ss 93 and 94 Evidence Act (cap 97).

9. It is submitted by the Defendants that the terms of the document (PB 12) are different from the oral agreement for Part A works. It is further contended that the Plaintiffs had not accepted the Defendants' offer contained in PB 12. They did not return the document signed by Koay or communicated their acceptance of the terms in the document to the Plaintiffs. I disagree with the Defendants' contentions and analysis of the evidence.

10. The Plaintiffs' collaboration with Chia came about because Liew's two companies, Li Hwee and V5 Building Construction Pte Ltd ("V5 Building"), did not qualify to tender for the Woodlands Project. Liew saw the tender notice advertised in the newspapers and suggested to Chia that she approached the Defendants who are G2 certified contractors. Their arrangement was that they would get the Defendants to tender for the project and if successful, to sub-contract the Woodlands Project to Liew's company. It is common ground that the back room work for the tender was prepared by the Plaintiffs with some input from Chia. Liew prepared the "Tender Price Breakdown". After the Defendants secured the tender, the Plaintiffs at the request of the Defendants started the first phase of the Woodlands Project known as Part A in July 2001. The Defendants had also secured from the Plaintiffs a reduction of 3% of the lump sum price to $722,322 for the entire project.

11. The document at PB 12 is the alleged sub-contract. Chia agreed that Liew had asked for the contract document and she in turn followed up with Koay who had agreed to expedite the matter. Eventually Koay produced the sub-contract and signed both sets of originals. Koay himself backdated the document to 11 May 2001 to coincide with the letter of award addressed to his company. Chia handed one signed copy to Liew for his consideration in July 2001. She explained that she had retained the duplicate copy with the intention of returning it to Koay should Liew require amendments. Liew said he signed the sub-contract and kept it as the Plaintiffs' copy since he was handed one original set.

12. In my judgment, the Defendants have not established that the contract document (PB 12) was not intended to be a binding agreement despite it being signed by the party who has refused to

be bound by it. I construe Koay's unqualified execution on behalf of the Defendants as disclosing an intention to be bound and was not conditional upon the execution of the document by Li Hwee. The executed document was not handed to Li Hwee to be used only upon fulfilment of a condition. This conclusion is not inconsistent with the matrix of facts in which the agreement was set. It was Chia's idea that Liew review the terms of sub-contract since it was in his interest to do so. She admitted that Koay did not ask her to obtain Liew's comments on the sub-contract document. She was given the two originals for Li Hwee's execution.

13. From the terms of the document itself the parties intended that the document executed by them should constitute a legally binding contract. The terms of the document are typical of a commercial agreement intended to be binding. Even before Liew signed it, the executed document is prima facie enforceable against the Defendants as the party who has signed it.

14. Subsequent events also assist in determining the question whether there was a concluded contract for the entire Woodlands Project. Tong in his written testimony disclosed that after he heard that the Plaintiffs wanted to withdraw, the Defendants asked Wee Ngiak take over Part B works from the Plaintiffs as the Defendants would otherwise be left in the lurch. His evidence is consistent with my finding of a binding contract between the Plaintiffs and Defendants.

15. I now turn to the second question which is whether the sub-contract was mutually terminated subsequently. The Defendants relied on the course of events after end July 2001 for their submission that if there was a contract the parties so acted as to abandon it and thus to abrogate it. It is necessary to consider those events for this purpose.

16. It is common ground that the collaborators, Liew, Lin and Chia, were to each have one-third share of the after tax profits. Counsel for the Plaintiffs conceded that as Part B works had commenced, Liew and Lin were concerned about the Plaintiffs' lack of working capital. It was agreed in July 2001 that all three of them should each contribute $7,000 as working capital as the Plaintiffs was a newly incorporated company with very little capital. Whatever funds Li Hwee had were used to finance the Geylang Bahru project undertaken by Liew's other company V5 Building. Money was needed to pay the workers of the Woodlands Project. It transpired that Liew later changed his mind and did not want to contribute the sum of $7,000. It was explained that as Chia owed V5 Building money on the Geylang Bahru Project, she was thus required to contribute the full sum of $21,000 into a special account. She refused.

17. According to Chia, before 13 August 2001 meeting, Lin had called her about Liew's decision not to contribute his share of $7,000 and she was told then that the Plaintiffs would withdraw from the Woodlands Project after completing Part A works. This decision was repeated on 13 August 2001 when she met the Liew and Lin. Liew proceeded to tear up what he claimed to be the contract document when Chia asked for it to be returned to the Defendants in view of the Plaintiffs' decision. It transpired during cross-examination that what Liew had in fact torn up was some other pieces of paper. On 14 August 2001, Lin met the Defendants' director, Tong and Chia. Both Tong and Chia had testified that Lin confirmed to them that the Plaintiffs would cease Part B works after completion of Part A works. Lin has denied this. Both Chia and Tong also testified that Lin also confirmed to them that he would assist Chia on a personal basis to complete Part B works. During cross-examination, Lin said that he had agreed to assist Chia from 20th November 2001 and not earlier.

18. The Plaintiffs argued that Chia had misled the Defendants into believing that the Plaintiffs were planning to "abandon" Part B works when it was never their intention to do so. The Plaintiffs' contention is that the contract was not terminated. No formal notice termination under clauses 3.3 and/or 3.15 of the sub-contract was sent to the Plaintiffs. The Plaintiffs' workers remained and

continued to work on the Woodlands Project under the supervision of Lin right up to 20th November 2001. Liew in the normal course raised progress payment claims for Part B works to the Defendants in September and October 2001. The Defendants rejected the claims on 2nd November 2001 as the Plaintiffs were engaged only for Part A works. The Defendants claimed that the Plaintiffs have already been paid Part A works.

19. I am satisfied that Chia did not know that it was not the sub-contract document that Liew had torn up and that he was simply play-acting. She took his action seriously which reinforced her belief and understanding that the Plaintiffs did not want to proceed further with the contract. She told the Defendants about the incident and the Plaintiffs' decision to withdraw from Part B works. The Defendants believed her and as they did not wish to be left in the lurch, asked Wee Ngiak to take over Part B works.

20. I find that the Plaintiffs did withdraw from Part B works and they did so because of lack of funds to undertake Part B works. This finding is supported by Lin's evidence that he told Liew that he should support Chia by remaining on site. Lin testified that Liew agreed that he helped Chia. He said: "..if Chia did not continue with the project we would not get paid. Only when she got paid would we be paid." See NE 204. Liew and Lin wanted her to complete the Woodlands Project for fear that if she did not, V5 Building would not be paid by Wee Ngiak for the Geylang Bahru project. I find that Lin assisted Chia on a personal basis sometime after 13 August 2001 and not from 20th November 2001 as alleged by Lin. Chia had given him cash advances and/or had reimbursed Lin for purchase of building material for Part B works since September 2001 right through to December 2001. She had also settled his personal bills, fines and hire purchase instalment for his vehicle.

21. In my judgment, the sub-contract had been mutually terminated or abrogated by the conduct of the parties on or by 14 August 2001. The Defendants had considered it at an end because they appointed Wee Ngiak to carry out or continue with Part B works. The sub-contract for Part B works between the Defendants and Wee Ngiak was executed on 14 September 2001. The sub-contract was backdated to 1 August 2001.

22. By 14 August 2001, the Plaintiffs knew from Chia the Defendants' decision to appoint Wee Ngiak to execute Part B works but did not at that stage raise any objection with the Defendants. After that the Plaintiff took no step towards performing their contract and acquiesced in considering their obligation at an end. In my judgment, the Plaintiffs stood by and allowed Wee Ngiak to carry on with Part B works. They stood by and allowed Wee Ngiak to pay the hire of equipment, material suppliers and freelance workers for Part B works. Liew during cross-examination admitted that whomsoever the freelance worker worked for is the person who is responsible for the worker's wages. She paid in September wages of the workers which were outstanding since July 2001. Documentation from suppliers such as invoices, delivery orders and rental agreements previously in the name of the Plaintiffs were changed to Wee Ngiak. From August 2001, documentation from suppliers was issued in the name of Wee Ngiak. I find that there was no agreement between the Plaintiffs and Wee Ngiak that the latter would pay the outgoing for Part B works on behalf of the Plaintiffs. The Plaintiffs in their Closing submissions conceded that Chia took over the Woodlands Project after 13th August 2001 and the Plaintiffs did not order material after that date. Lin in his affidavit of evidence-in-chief said that Chia started to order material and hire equipment since 13 August 2001. Chia paid for all material supplied for Part B works. I accept the Defendants' submissions that but for Wee Ngiak taking over Part B works, there was no reason for Wee Ngiak to incur those expenses when Chia had objected to a contribution of $21,000 which is a relatively small amount by comparison. It is also telling that the Plaintiffs had not in the past confronted Chia and accused her of misleading the Defendants. There were no claims or demands made against her since August 2001. The Plaintiffs sued Chia on 16 April

2002 after an Order 14 hearing. In my judgment, the parties have informally but effectively so acted in relation to each other as to abandon or abrogate the sub-contract contract.

23. I conclude that although a sub-contract in relation to the totality of the Woodland Project came into existence with effect from 11 May 2001, that sub-contract was afterwards terminated as a result of the common intention of the parties that it should no longer bind them. There is accordingly no basis on which the claim for loss of profits is founded.

24. It is admitted by Chia that the Plaintiffs erected hoarding and hacked the floor slabs in Block 611 and Block 622. I therefore order that there be an assessment by the Registrar of the amount due, if any, to the Plaintiffs under progress payment claim no. 3. On the question of costs of the action, the Defendants are to bear two-thirds of the costs.

25. The Defendants having succeeded on their claim that the contract was abrogated by mutual consent, it follows that the Plaintiffs' claim in Suit No. 441 of 2002 against Chia fails. I according dismissed it with costs.

26. Should a different view be taken, it is clear from the evidence and I find that Chia as project manager of the Woodlands Project was not an employee of the Plaintiffs. She was on the Plaintiffs' evidence their collaborator in the Woodlands Project with a one-third share of the after tax profits. Unlike an employee, she was asked and it was at one time agreed that Chia and the other two directors of the Plaintiffs would each contribute $7000 towards the working capital for the Woodlands Project. Equally pertinent is the fact that she was expected to bear one-third of the losses. It was not suggested that she had received any payment as project manager.

27. Nothing turns on the CPF contribution from the Plaintiffs for the months of January to March 2001. Her involvement with the Plaintiffs at that stage was to assist in obtaining a G1 certification.

Sgd:

BELINDA ANG SAW EAN

JUDICIAL COMMISSIONER

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